

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter ofFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of the Part 90 of the Commission's
Rules to Facilitate Future Development of
SMR Systems in the 800 MHz Frequency Band

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PR Docket No. 93-144**REQUEST FOR EXTENSION OF TIME****To: Chief, Wireless Telecommunications Bureau**

Preferred Communications Systems, Inc. ("Preferred") for itself and the licensees listed on Attachment A hereto (collectively, the "Affected Licensees"), by its attorney, hereby submits this Request (the "Request"), pursuant to the provisions of Section 1.41 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") that the Commission extend the period of time for certain licensees of "General Category" 800 MHz Specialized Mobile Radio ("SMR") stations to assign their authorizations without prior construction, as otherwise provided in the Second Report and Order in the above referenced proceeding.^{1/}

^{1/} Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Second Report and Order, 12 FCC Red 19079, ¶ 42 (1997) (the "Second Report and Order").

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Background

In the Second Report and Order, the Commission, among other actions, temporarily waived the provision of the regulations that otherwise prohibit the assignment or transfer of authorizations covering the unconstructed "lower 80" and General Category 800 MHz SMR channels. Pursuant to the Second Report and Order, the assignee or transferee of the license for such an unconstructed station is required to construct the station facilities before the later of the applicable construction expiration date or as set forth in any applicable extended implementation authority. This temporary waiver is scheduled to remain in effect until six months from the end of the auction of "upper 200" 800 MHz SMR licenses. That auction ended on December 8, 1997.^{2/} Consequently, the waiver of the ban against assignment or transfer of licenses for unconstructed stations expires on June 8, 1998.

The waiver of the ban against assignment or transfer of licenses of unconstructed stations uniquely affects those defrauded consumers who acquired their licenses through the so-called license application services of scam telemarketers. Most of those defrauded consumers were bilked by companies put into receivership with Daniel R. Goodman as receiver,^{3/} but some were customers of what Preferred believes are spin-offs or copy-cats of those four companies.^{4/}

Mr. Goodman, on May 11, 1998 filed a request for extension of the June 8, 1998 deadline, which request remains pending as of this morning. Although Mr. Goodman had provided the

^{2/} See Public Notice DA 97-2583, released December 9, 1997

^{3/} The "Goodman" companies were Metropolitan Communications Corp., Columbia Communications Service Corp., Nationwide Digital Data Corp., and Stephens Sinclair, Ltd.

^{4/} Examples are Comcoa, ILLC, and Express.

FCC with a list of those licensees which he has authority to make a request,^{5/} that list is not publicly available. Moreover, most defrauded customers are not in position to know whether they are on Mr. Goodman's list. Therefore, Preferred herein asks that its Affected Licensees be accorded the same treatment (including the same filing deadline) as the Goodman licensees.

Preferred believes that in Daniel R. Goodman, Receiver, 10 FCC Rcd. 8537 (1995) ("MO&O"), the FCC decided to refrain from taking enforcement actions against the Affected Licensees and otherwise ensure that the Affected Licenses were not prejudiced during the FCC's consideration of the Receiver's waiver request which led to the grant of the MO&O. Because in some cases the FCC took such prejudicial actions during the pendency of the Receiver's waiver request, curative relief is now required. The MO&O issued nearly three years ago, but has not been published in the Federal Register.

The Affected Licensees, therefore, have not yet been able to realize the benefit of the provisions contained in the MO&O. Because the Affected Licensees should have additional time to construct and load their facilities when the MO&O becomes effective, they also cannot realize the full benefit of the waiver provisions of the Second Report and Order noted above. Preferred, therefore, requests that the Commission extend the waiver provisions of the Second Report and Order to the Affected Licensees, all others similarly situated, and their transferees, for the greater of: a) a period at least four months after the MO&O becomes effective for each Affected License; or b) June 8, 1999. The Commission must grant this relief in order to avoid the unintended result

^{5/} A list of the Affected Licensees was provided to the Commission in December 1994. See Letter to Rosalind K. Allen, Chief Commercial Radio Division, from Russell H. Fox, Esquire, December 9, 1994 (attaching a list of all licensees affected by Goodman matter).

of the benefits of the waiver provisions of Second Report and Order not being realized by the Affected Licensees -- who were within the class of intended beneficiaries of this provision.

The temporary time period for Affected licensees to assign or transfer licenses for unconstructed facilities will have no meaning or effect with respect to the Affected Licensees if the Second Report and Order's provision expires before the MO&O ever becomes effective. The Affected Licensees' ability to assign unconstructed stations is dependent on the publication of the MO&O for two reasons. First, the FCC has asserted that the licenses issued to the Affected Licensees are not valid (unless they were constructed within eight months of their initial license grant) until such time as the MO&O is published.^{6/} Preferred does not agree with the FCC's interpretation of the MO&O.^{7/} However, assuming *arguendo* that this interpretation is valid, the Affected Licensees have had no ability to assign their authorizations to date, and cannot have taken advantage of the waiver provisions of the Second Report and Order.

Even if, as Preferred believes, the Commission's interpretation is incorrect, the Commission's failure to take the curative actions required by MO&O makes it less likely that the Affected Licensees will be able to carry out a sale or transfer of their authorizations. The provisions of the Second Report and Order must therefore be extended until the FCC takes those curative actions, so that the Affected Licensees can take advantage of the provisions so plainly intended for their benefit. There is no valid reason for the Affected Licensees to be denied the

^{6/} See Letter to Bob Shirley from Terry L. Fishel, Deputy Chief, Licensing & Technical Analysis Branch, Commercial Wireless Division, dated January 15, 1998. FCC File No. 7110-02.

^{7/} Preferred intends to file assignment applications for unconstructed stations in advance of any Federal Register publication of the MO&O.

relief granted by the Second Report and Order, particularly because the barrier to this relief is exclusively the result of the Commission failing to timely grant the relief specified, and otherwise publish the MO&O.

The relief sought in this Request will permit the Affected Licensees to assign or transfer the licenses covering their facilities in accordance with the MO&O and the Second Report and Order. Indeed, the relief requested herein, when granted, will avoid the inequity of the Commission granting relief to the Affected Licensees only to have the inaction by the staff of the FCC negate that relief and render it meaningless.

As the FCC recognized in the MO&O, the circumstances giving rise to this request are unique: the Affected Licensees were fraudulently induced to apply for the authorizations without complete comprehension of their actual responsibilities mandated by the FCC. The Commission recognized these circumstances when it granted an extension of the construction period for the Affected Licensees in the MO&O. The relief Preferred now seeks is designed simply to remedy an anomaly that will result from the expiration of the temporary waiver of the rules which prohibit assignment or transfer of licenses of unconstructed stations before the MO&O ever becomes effective. This unintended result only may be cured by extending the application of the provisions of the Second Report and Order to the Affected Licensees.

Preferred has standing to file this Request on behalf of the Affected Licensees, because Preferred is a ready, willing, and able buyer. The instant Request is made on behalf of multiple licensees who are similarly situated. The Commission's consideration of this Request on behalf of all of the Affected Licensees would preserve administrative resources by avoiding the repetitious

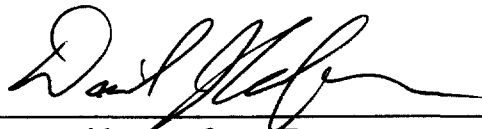
evaluation of common facts that would be necessary if each Affected Licensee were required to file a separate request.

Conclusion

The Commission should immediately grant this Request, and extend the temporary construction and assignment provisions of the Second Report and Order. The relief requested herein is necessary to ensure that the relief specifically granted for the benefit of the Affected Licensees (and all others similarly situated) by the Second Report and Order and the MO&O is not rendered meaningless. Such relief will have no negative effects on other parties or the public. Indeed, the circumstances that give rise to this request are unique and are unlikely to be encountered by the FCC again. For all the foregoing reasons, Preferred urges the FCC to immediately grant the limited relief requested herein.

Respectfully submitted,

Preferred Communications Systems, Inc.

By: 
David J. Kaufman, Esq.,
Its Attorney

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Washington, DC 20036
(202) 887-0600

June 4, 1998

<u>CALL SIGN</u>	<u>Licensee</u> <u>Name</u>	<u>State</u>
WFFF657	Arakaki	Lloyd T.
WPFZ807	Balaban	Edward G.
WPIS632	Benge	Steve
WPGP600	Bowman	Benny
WPEV201	Bruno	Robert
WPHQ519	Caputo	Renee
WPFT220	Carey	Joanne T.
WPPG639	Castanon	Jose L.
WPHJ239	Chinuge	David
WPFZ806	Chinuge	David
WPGP582	Churilla	James
WPFN636	Clark	Glenn E.
WPHZ872	Conti	Elvira
WPDU275	Cullar	Thomas M.
WPIQ350	Flemmer	Arthur
WPFA280	Freeland	Charles L.
WPGY736	Glace	Jeffrey S.
WPFA278	Goen	Rayburne E.
WPDF603	Gross	Donald
WPDF660	Gross	Linda
WPPG623	Grossman	James L.
WPFT366	Hewitt	Dale E.
WPFN725	Hinkamp	William
WPGX624	Hoover	James L.
WPEY451	Huseby	Cedric L.
WPDF812	Jackler	Raymond
WPGD852	Judy	Michael D.
WPHQ698	La Ranger	John
WPFZ805	Lakos	Anne M.
WPFZ808	Lakos	Theodore M.
WPIQ275	Larsen	Manthey B.
WPIQ279	Larsen	Nina
WPGD855	Madill	Robert F.
WPET406	Marsh	Sarah J.
WPFM592	Martin	Todd
WPDU263	Mitchell	Gary E.
WPEY447	Nelson	James
WPDF810	Neugent-Ott	Sally
WPHQ521	Orenski	Caroline
WPEF461	Pchan	Lampanh
WPDU271	Pishney	Philip
WPFA273	Pratt	David
WPFA270	Ramsey	Ivan D.
WFFF665	Reghi	Nicholas L.

PFS856	Reghi	Nicholas L.	1 VI
WPFS857	Regli	Nicholas L.	1 VI
WPF678	Reimer	John H & Judith L T	1 PR
WPGP609	Richard	Patrick A.	1 PR
WPIQ967	Rodin	Philip	1 PR
WPEX345	Runge	Lenora	1 PR
WPFT328	Sass	William H.	1 PR
WPFT437	Sass	William H.	1 VI
WPFT327	Sass	William H.	1 VI
WPHR304	Sawaya	Jeanine	1 VI
WPFF671	Schlotman	Marion	1 PR
WPEY419	Schneider	Frank E., Jr.	1 PR
WPGF598	Sheldon	Gwyneth Ann	1 PR
WPGF599	Sheldon	Gwyneth Ann	1 PR
WPHT316	Shenker	Rita	1 PR
WPFF673	Smith	Joscelyn E.	1 PR
WPGP583	Stapf	James	1 PR
WPFX997	Strong	Mark W.	1 PR
WPFS938	Talcott	John G., III	1 PR
WPFT492	Talcott	John G., III	1 VI
WPFT340	Talcott	John G., III	1 VI
WPFF670	Tooker/Ward	Peter/Claudia	1 PR
WPEY421	Trueblood	David W.	1 PR
WPF811	Tucker	Paul	1 PR
WPHQ522	Turino	Paul	1 PR
WPHJ235	Vineleaf	Roy	1 PR
WPGY724	Walker	Timothy D.	1 PR
WPGN483	Weaver	Barry K.	1 PR
WPGX626	Weems	Robert C.	1 PR
WPEZ750	West	Joseph P., Jr.	1 PR
WPFF521	Willingham	Gregory	1 PR

Declaration of Charles Austin

My name is Charles Austin. I am president of Preferred Communications Systems, Inc. ("Preferred"). I have read the foregoing Request for Extension of Time, which was prepared at my request. Most of the facts set forth therein are subject to official notice. All other statements of fact set forth therein are true and correct, to the best of my knowledge, information and belief. Without limiting the foregoing, Preferred has a purchase agreement in place with each of the licensees listed in Attachment A to the Request.

I declare under penalty of perjury this 4th day of June, 1998, that the foregoing statement is true and correct.



Charles Austin